



HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Irshad Khan
Heard on:	Thursday, 08 December 2022
Location:	Held Remotely by video conference
Committee:	Mrs Helen Carter-Shaw (Chair) Ms Joanne Royden-Turner (Accountant) Mr Nigel Pilkington (Lay)
Legal Adviser:	Miss Juliet Gibbon (Legal Adviser)
Persons present and capacity:	Ms Afshan Ali (ACCA Case Presenter) Ms Nyero Abboh (Hearings Officer)
Summary	Allegations 1a), 1b), 1c), 1d) and 2a) found proved. Removal from student register
Costs:	£5,551.00

PRELIMINARY

1. The Disciplinary Committee (“the Committee”) convened to hear allegations of misconduct against Mr Irshad Khan. The hearing was conducted remotely through Microsoft Teams.

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The Committee had a bundle of papers numbered pages 1 to 76, an incomplete Case Management Form (“CMF”), numbered pages 1-22, and a service bundle, numbered pages 1 to 21. The Committee was also provided with a detailed and a simple cost schedule.

2. Ms Afshan Ali represented ACCA. Mr Khan did not attend the hearing and was not represented.

SERVICE

3. Written notice of the hearing was sent by electronic mail (“email”) to Mr Khan’s registered email address on 10 November 2022 and he was also sent a password separately to access the document. The Committee had sight of the delivery notification that indicated the email was delivered on 10 November 2022 at 14:07:59 hours. By virtue of Regulation 22(8)(b) of The Chartered Certified Accountants’ Complaints and Disciplinary Regulations 2014, as amended (“the Regulations”) the notice is deemed served on the same day.
4. The Committee accepted the advice of the Legal Adviser. The Committee was satisfied that ACCA had given the requisite 28 days’ notice required under Regulation 10(1)(a) of the Regulations. It was also satisfied that the email attaching the notice of hearing, to which Mr Khan had access, contained all the requisite information about the hearing in accordance with Regulation 10(1)(b) of the Regulations. The Committee was, therefore, satisfied that service had been effected in accordance with Regulations 10 and 22 of the Regulations.

APPLICATION TO PROCEED IN ABSENCE

5. Ms Ali made an application to proceed in the absence of Mr Khan.
6. The Hearings Officer attempted to telephone Mr Khan on 25 November 2022 but without success. She subsequently sent Mr Khan an email on 25 November 2022, asking him to confirm his attendance at the hearing. Mr Khan replied by email the same day stating: “Yes. *I will be attending the hearing and I can understand and speak English...*”. Mr Khan

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confirmed that he had been able to open and read the documents in a further email to ACCA on 25 November 2022.

7. The Committee considered whether it should proceed in Mr Khan's absence. It accepted the advice of the Legal Adviser. The Committee bore in mind that whilst it had a discretion to conduct a hearing in the absence of the relevant person, it should exercise that discretion with the utmost care and caution. The Committee paid due regard to the factors set out in the cases of *Hayward & Others* [2001] 3 WLR 125 and *R v Jones* [2002] UKHL 5 and to the case of *The General Medical Council v Adeogba and Visvardis* [2016] EWCA Civ 162.
8. The Committee was mindful that there is a public interest in dealing with regulatory matters expeditiously. It noted that the Hearings Officer had attempted to speak to Mr Khan on 07 December 2022 and immediately prior to today's hearing but without success. The Hearings Officer had also sent an email to Mr Khan on 07 December 2022 to confirm his attendance at the hearing, but he had not responded.
9. Mr Khan had not asked for an adjournment and the Committee determined that there was no evidence before it, particularly given the history of the case and his previous indication by telephone that he would not engage with ACCA, to suggest that an adjournment of today's hearing would result in his attendance on a future date.
10. Having balanced the public interest with Mr Khan's own interests, the Committee determined that it was fair, reasonable and in the public interest to proceed in the absence of Mr Khan.

ALLEGATIONS

Mr Irshad Khan ("Mr Khan"), an Association of Chartered Certified Accountants' ("ACCA") student:

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- 1) *Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended), failed to co-operate with the investigation of a complaint, in that whilst he responded to one email sent by ACCA on 2 July 2021, he has not responded or provided a sufficient response to any of the other correspondence sent by ACCA dated:*
 - a) *28 April 2021;*
 - b) *20 May 2021;*
 - c) *2 July 2021;*
 - d) *13 August 2021.*

- 2) *By reason of his conduct Mr Khan is:*
 - a) *Guilty of misconduct pursuant to bye-law 8(a)(i); in respect of any or all of the matters set out at 1 above; or in the alternative,*

 - b) *Liable to disciplinary action pursuant to bye-law 8(a)(iii).*

BACKGROUND

11. Mr Khan first registered as a student of ACCA on 14 November 2019. As such, he is bound by ACCA's bye-laws and Regulations.

12. On 21 November 2020, Mr Khan took an on-demand MA2 Managing Costs and Finance examination ("the Exam") remotely. The Proctor (remote exam invigilator) filed an Incident Report in respect of Mr Khan's conduct as observed during the Exam. This included looking off-screen, communicating with a third party and shuffling pages during the Exam.

13. ACCA wrote to Mr Khan by email on 23 December 2020 asking him to respond to the email with any comments he had in relation to the report that indicated that an incident had occurred during the Exam where the academic integrity of the Exam was compromised,

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contrary to ACCA's Examination Regulations and Guidance. Mr Khan responded to ACCA by way of an email sent from his registered address on 24 December 2020, in which he stated: *"I am really sorry for what I have been done in the exam and I promise this type of behaviour won't be occurred next tim. Thanks in advance ..."* (sic). On 31 December 2020, Mr Khan sent an email to ACCA in which he asked: *"When will the final decision come out"*.

14. ACCA commenced an investigation into Mr Khan's conduct. All correspondence was sent to Mr Khan by email to the email address that he had previously registered and communicated with ACCA. None of the emails 'bounced back' to ACCA.
15. ACCA sent a letter, dated 28 April 2021, to Mr Khan's registered email address informing him of the complaint about his conduct in the Exam and sought a response to a number of questions by 19 May 2021. Mr Khan was also advised of his duty to co-operate in accordance with Regulation 3(1) of the Regulations. ACCA did not receive a response to this email from Mr Khan.
16. A further letter was sent by ACCA to Mr Khan's registered email address on 20 May 2021 reminding him of his obligation to co-operate with the investigation and seeking a response by 03 June 2021. Again, ACCA did not receive a response from Mr Khan.
17. ACCA sent another letter by email to Mr Khan's registered email address on 02 July 2021 reminding him of his obligation to co-operate. Mr Khan replied to ACCA by email on 12 August 2021, stating, *'this is not working'*.
18. ACCA sent a further letter by email to Mr Khan's email address on 13 August 2021. Mr Khan was again reminded of his duty to co-operate with the investigation and asked to provide a response by 20 August 2021. No response was received by ACCA.
19. On 30 July 2021, ACCA sent Mr Khan a copy of the report of disciplinary allegations that had been sent to the assessor for review. He was informed that he had until 16 August 2021 to bring any comments or concerns that he wished to bring to the assessor's attention. Mr Khan did not respond.

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20. On 08 September 2021, ACCA sent a letter to Mr Khan, together with a copy of the report of disciplinary allegations, informing him that the report was to be referred to the assessor for review on 25 September 2021. Mr Khan was invited to make any comments in writing to ACCA prior to that date. He did not respond.
21. ACCA sent an email to Mr Khan on 23 February 2022, attaching the assessor's report and a CMF for him to complete and return by 23 March 2022. Mr Khan failed to return the CMF. ACCA sent a further CMF to Mr Khan on 4 October 2022, asking him to complete and return it by 11 October 2022. Again, Mr Khan failed to return the CMF.
22. ACCA attempted to speak to Mr Khan by telephone on 10 October 2022. On the first attempt, the call was terminated when the person who answered the telephone was informed that the caller was from ACCA. On the second attempt, the person who answered the telephone said that he did not want to talk about the matter and then terminated the call. On the third attempt, the person who answered the telephone confirmed that he was Mr Khan and, when informed that ACCA was calling about his ongoing matter with ACCA and the outstanding CMF, he said that he did not want to discuss the matter and would not be engaging with ACCA. Mr Khan then terminated the call.

ACCA SUBMISSIONS

23. Ms Ali submitted that the evidence before the Committee proved, on the balance of probabilities, that Mr Khan had received the letters sent to him on 28 April, 20 May, 02 July 2021 and 13 August 2021. She further submitted that, in failing to respond to the correspondence sent to him by ACCA, Mr Khan had breached Regulation 3(1) of the Regulations, that provides:
 - a) Every relevant person is under a duty to co-operate with any investigating officer and any assessor in relation to the consideration and investigation of any complaint.

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- b) The duty to co-operate includes providing promptly such information, books, papers or records as the investigating officer or assessor may from time to time require.
- c) A failure or partial failure to co-operate fully with the consideration or investigation of a complaint shall constitute a breach of these regulations and may render the relevant person liable to disciplinary action.

24. Ms Ali further submitted that:

- a) The failure of a student to co-operate with his professional body was a very serious matter, demonstrating a lack of professional responsibility and a complete disregard for ACCA's regulatory process.
- b) The failure of Mr Khan to respond to the questions asked by the Investigating Officer during the investigation into his conduct during the Exam had prevented ACCA from fully investigating the complaint against him and, if considered necessary, taking disciplinary action in relation to what may have amounted to a very serious matter.
- c) Mr Khan had an obligation to co-operate with his professional body and to engage with it when a complaint was raised. Such co-operation is fundamental to ACCA, as his regulator, being able to discharge its obligations of ensuring public protection and upholding the reputation of the profession.
- d) Mr Khan had acted in a manner which brought discredit to him, the Association and the accountancy profession, and his failure to co-operate with the investigation into a complaint against him was so serious as to amount to misconduct.

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- e) If the Committee was not satisfied that Mr Khan's failure to co-operate amounted to misconduct then, as he has breached Regulation 3(1) of the Regulations, it should find him liable to disciplinary action.

DECISION AND REASONS

- 25. The Committee carefully considered the documentary evidence before it and the oral submissions made by Ms Ali. The Committee accepted the advice of the Legal Adviser.
- 26. The Committee bore in mind that the burden of proving a factual allegation in dispute rests on ACCA and the standard of proof is the balance of probabilities. The Committee drew no adverse inference from the fact that Mr Khan did not attend the hearing.

ALLEGATION 1a), 1b), 1c) and 1d) - PROVED

- 27. On the evidence before it the Committee was satisfied that ACCA had sent letters to Mr Khan's registered email address on 28 April, 20 May, 02 July 2021 and 13 August 2021 and that they had been successfully delivered.
- 28. The Committee noted that Mr Khan had sent three emails to ACCA from his registered email address on 24, 31 December 2020 and 7 January 2021. It also noted that on 12 August 2022, Mr Khan had responded to the email sent by ACCA on 02 July 2022 stating '*this is not working*' but that he had not replied to any of ACCA's other correspondence.
- 29. The Committee was satisfied that Mr Khan had not responded to the questions asked of him by ACCA in the correspondence of 28 April, 20 May, 02 July 2021 and 13 August 2021 in relation to the complaint that had been made against him by the Exam Proctor. It noted that Mr Khan had been warned by ACCA on each occasion that he had a duty to co-operate with the ACCA investigation and that there was a requirement for him to respond. The Committee was satisfied that Mr Khan, in failing to respond to the correspondence, had failed to co-operate with ACCA's investigation into his alleged conduct in the Exam, in

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breach of Regulation 3(1)(c) of the Regulations. Accordingly, it found Allegations 1a), 1b), 1c) and 1d) proved.

ALLEGATION 2a) - MISCONDUCT FOUND

30. The Committee determined that Mr Khan's conduct, in failing to co-operate with the investigation against him, fell far below the standards expected of an ACCA student. In the Committee's determination, Mr Khan's conduct showed a disregard for his regulator; undermined the integrity of ACCA's investigatory process and had brought discredit to him, the Association and the accountancy profession.
31. The Committee made no findings in respect of the complaint that was being investigated by ACCA. The requirement for members, including students of ACCA, to engage and co-operate with their regulator during an investigation was, however, fundamental. A failure by members to do so would mean that ACCA's ability to regulate its members, in order to ensure proper standards of conduct and to maintain its reputation as a regulator, could be seriously compromised.
32. The Committee was satisfied that Mr Khan's failure to co-operate with the ACCA investigation was a very serious and deliberate breach of the Regulations that occurred on more than one occasion. Mr Khan's failure had prevented ACCA from investigating a potentially serious allegation and it clearly amounted to misconduct.
33. The Committee, having found Allegation 2a) proved, did not go on to consider Allegation 2b), which was pleaded in the alternative.

SANCTION AND REASONS

34. Ms Ali informed the Committee that there were no previous disciplinary findings against Mr Khan.

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35. The Committee accepted the advice of the Legal Adviser who referred it to Regulation 13(4) of the Regulations and to ACCA's Guidance for Disciplinary Sanctions. In considering what sanction, if any, to impose, the Committee bore in mind the principle of proportionality and the need to balance the public interest against Mr Khan's own interests. The purpose of any sanction was not meant to be punitive but was to protect members of the public, maintain public confidence in the profession and ACCA and to declare and uphold proper standards of conduct and behaviour.
36. When considering the appropriate sanction, the Committee considered the aggravating and mitigating features of the case. The Committee accepted that there were no previous findings against Mr Khan but also took into consideration that he had been a student member of ACCA for a relatively short period of time when the misconduct took place. The Committee did not consider that there were any specific aggravating features.
37. The Committee considered the guidance provided by ACCA in the Guidance for Disciplinary Sanctions and, in particular, that in Section F (*'factors relevant to seriousness in specific case types'*) a failure to co-operate with a disciplinary investigation was considered to be very serious.
38. The Committee had no information regarding the personal circumstances of Mr Khan, nor had it been provided with any testimonials or references.
39. The Committee considered each available sanction in ascending order of seriousness, having concluded that taking no further action was not appropriate due to the seriousness of the misconduct. The Committee also considered that issuing an admonishment or a reprimand would not be sufficient or proportionate, given the gravity of the matters proved, and would not protect the public interest.
40. The Committee carefully considered whether a severe reprimand would be a sufficient and proportionate sanction, or whether removal from the Student Register was required. It paid

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careful regard to the factors applicable to each of these sanctions as set out in the Guidance for Disciplinary Sanctions. The Committee considered that most of the factors applicable to a severe reprimand did not apply in this case. Mr Khan had shown that he could communicate with ACCA by email and had chosen not to. He had offered no explanation or apology. Mr Khan had failed to co-operate with ACCA, his regulator, both in relation to the investigation of his conduct during an examination, and also given that there had only been limited engagement by him in relation to these proceedings. The Committee concluded that a severe reprimand would not be appropriate or sufficient to protect the public interest in this case.

41. The Committee was mindful that the sanction of removal from the student register was the most serious sanction that could be imposed. The Committee took into account the guidance that this sanction was likely to be appropriate when the behaviour of the student was fundamentally incompatible with being a registered student of ACCA. The Committee was satisfied that Mr Khan's conduct, in failing to co-operate with his regulator on more than one occasion, and given the particular circumstances of this case, had reached that high threshold.
42. For the above reasons, the Committee concluded that the appropriate and proportionate sanction was for Mr Khan to be removed from the student register.
43. The Committee did not deem it necessary to impose a specified period before which Mr Khan can make an application for readmission as a student member.

EFFECTIVE DATE

44. The Committee determined that the order shall take effect from the date of the expiry of the appeal period referred to in the Appeal Regulations.



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DECISION ON COSTS AND REASONS

45. ACCA applied for costs in the sum of £6,721.00. The Committee had been provided with a detailed and a simple schedule of costs. Mr Khan had not sent ACCA a completed Statement of Financial Position. The Committee, was therefore, unable to consider what impact, if any, the imposition of a costs order would have on Mr Khan.
46. The bundle for this case was limited and straight forward and the hearing had finished earlier than anticipated. The Committee, therefore, reduced the costs claimed by ACCA to reflect this. The Committee determined that the sum of £5,551.00 would be the appropriate, reasonable and proportionate sum for ACCA to claim by way of costs.
47. The Committee determined, in the absence of any information about Mr Khan's financial means, that it would be fair and proportionate to order Mr Khan to pay a contribution to ACCA's costs in the sum of £5,551.00.

ORDER

- i. Mr Irshad Khan shall be removed from ACCA's student register.
- ii. Mr Irshad Khan shall pay a contribution to ACCA's costs in the sum of £5,551.00.

Mrs Helen Carter Shaw
Chair
08 December 2022